

REMARKS

Claims 1, 5, 11-13, 17, 21-24, 37, 38, 40, 41, 45-50, 52-74 are pending. Claims 53-74 are new. Claims 10, 29, 33-35, and 51 are now canceled without prejudice or disclaimer. Claims 11, 22, 23, 37, 38, 46-50 and 52 were withdrawn by the Examiner, but, as explained below, should now be rejoined.

Rejections under § 112, ¶ 2 for Indefiniteness

- a. Claim 24 was objected to for the omission of the word "the." Claim 24 has been amended according to the Examiner's suggestion.
- b. Claim 45 depended from a canceled claim. This claim has been amended to depend from claim 24 as the Examiner suggested.
- c. Claim 40 was rejected for language suggesting that the promoter is bound by acetyl phosphate. The promoter is regulated by acetyl phosphate. The claim has been amended according to the Examiner's suggestion.
- d. Claim 10 was rejected as indefinite for referring to a first and second enzyme. Claim 10 has been cancelled without prejudice. Claim 17 has been amended to present the relevant part of claim 10 in independent form. The claim now only refers to one enzyme. Thus, the rejection to claim 10 is moot.

Rejections under § 103

Claims 10, 12, 13, 21, 29, and 33-35 were rejected as obvious. The Applicants do not accede to obviousness rejections presented in the Office Action of November 18, 2004. However, to expedite prosecution, claims 10 and 33-35 are canceled without prejudice, rendering

the rejection moot. Claims 12, 13, and 21 have been amended and now depend from claim 17, which the Examiner determined was not obvious.

Obviousness-type Double Patenting

The Office Action rejected certain claims as obvious over the claims in U.S. 6,706,516. Without acceding to the merits of the rejection, the Assignee of this application and that patent have submitted a terminal disclaimer to obviate the rejection.

Conclusion

The Applicants submit that the claims are now in condition for allowance. The status of each of the independent claims is summarized below:

Claim 1. The only rejection made against claim 1 was for obviousness type double patenting. This rejection is obviated by filing of a terminal disclaimer.

Claim 17. Claim 17 was rejected as indefinite in view of language in claim 10, from which it depended. This language was been removed from claim 17. The only other rejection made against claim 17 was for obviousness type double patenting. This rejection is obviated by filing of a terminal disclaimer.

Claim 24. The typographical error leading to a rejection for indefiniteness in claim 24 has been corrected. The only other rejection made against claim 24 was for obviousness type double patenting. This rejection is obviated by filing of a terminal disclaimer.

Claim 40. The typographical error leading to a rejection for indefiniteness in claim 40 has been corrected. The only other rejection made against claim 40 was for obviousness type double patenting. This rejection is obviated by filing of a terminal disclaimer.

Given that these claims are all in condition for allowance, it also follows that there is sufficient basis for a finding of unity of invention.

Rejoinder

The Applicants respectfully request that the Examiner rejoin and allow the method claims (claims 22, 23, 46-50, 58-74). These claims depend from claims to host cells, and therefore come within the same unity of invention as the allowed claims. In addition, dependent claims to species e.g., claims 11, 38 and 52), should now be rejoined in view of the allowability of the broader independent claims. Note that this application is a National Phase application of PCT/US/00/20519. Rejoinder is mandated by both the PCT rules (see, e.g., MPEP 1850) and under MPEP 821.04.

A Petition requesting withdrawal of the species election is being submitted to the Office under separate cover. This Petition would be mooted if the Examiner agrees to rejoin all the withdrawn claims and to examine all claims entered above.

This amendment is being filed with a Request for Continued Examination and Petition for Extension of Time.

The Office is authorized to charge any fees required to maintain the pendency of this application, including fees for excess claims and Petitions of Time, to Deposit Account 06-1050.

Respectfully submitted,



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